



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

GULF COAST MEDICAL EVALUATIONS
1805 NORTHERN DRIVE
LEAGUE CITY TX 77573

Respondent Name

TEXAS MUTUAL INSURANCE CO

MFDR Tracking Number

M4-11-1156-01

Carrier's Austin Representative Box

Box Number 54

MFDR Date Received

DECEMBER 6, 2010

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "It has come to my attention that your company is denying claims on our patient because pre-authorization is required in accordance with 134.600. Unfortunately, this explanation fails to conform to Texas Department of Insurance, Workers Compensation Division rules and regulations."

Amount in Dispute: \$1,730.85

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The requestor performed a nerve conduction study (95903, 95904) 9/15/10 then billed codes 95903 and 95904. ODG does not recommend such studies when a patient is presumed to have symptoms on the basis of radiculopathy. Since this is outside of ODG preauthorization is required... However, Texas Mutual inadvertently paid one unit of 95904. The requestor performed and billed an EMG test (95861) and an H-reflex test (95934). ODG does recommend these tests as it related to radiculopathy. Texas Mutual paid the EMG testing and one unit of the H-reflex. Supplies billed with A4215, A4558, and A4556 were bundled to the EMG and H-reflex studies. The office consultation, code 99244-25, was bundled inadvertently to the other codes. Payment for 99214 will be made under separate cover and a \$72.05 credit will be taken against the one unit of 95904 paid."

Response Submitted by: Texas Mutual Insurance Co.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 15, 2010	Needle EMG – CPT Code 95861	\$132.10	\$0.00
September 15, 2010	Nerve Conduction Study – CPT Code 95903 (X4)	\$748.64	\$0.00
	Nerve Conduction Study – CPT Code 95904 (X4)	\$525.95	\$0.00
	Nerve Conduction Study – CPT Code 95934 (X2)	\$124.16	\$0.00

	Office Consultation – CPT Code 99244-25	\$200.00	\$0.00
	TOTALS	\$1,730.85	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307, effective May 25, 2008, 33 *Texas Register* 3954, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, 33 *Texas Register* 364, sets the reimbursement guidelines for the disputed service.
3. 22 Texas Administrative Code §75, effective December 24, 2009, 34 *Texas Register* 9208, sets out the scope of practice for chiropractors.
4. District Court of Travis County, 250th Judicial District No. D-1-N-GN-06-003451, Honorable Stephen Yelenosky, judge presiding, Order on cross-motions for partial summary judgment dated November 24, 2009
5. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012
6. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Mandate dated August 8, 2013
7. 28 Texas Administrative Code §137.100, effective January 18, 2007, sets out the use of the treatment guidelines.
8. 28 Texas Administrative Code §134.600 effective May 2, 2006 requires preauthorization for specific healthcare and services.
9. The services in dispute were reduced/denied by the respondent with the following reason codes:

Pertinent explanations of denial/reduction

- CAC-B18-This procedure code and modifier were invalid on the date of service.
- CAC-B22-This payment is adjusted based on the diagnosis.
- CAC-W1-Workers Compensation Fee Schedule Adjustment.
- 629-The medically unlikely edits (MUE) from CMS has been applied to this procedure code.
- 762-Denied in accordance with 134.600(p)(12) treatment/service in excess of DWC treatment guidelines (ODG) per disability management rules.
- 893-This code is invalid or not covered or has been deleted.
- 907-Only treatment rendered for the compensable injury is reimbursable. Not all conditions indicated are related to the compensable injury.
- CAC-193-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.
- CAC-4-The procedure code is inconsistent with the modifier used or a required modifier is missing.
- 732-Accurate coding is essential for reimbursement. CPT can/or modifier billed incorrectly. Services are not reimbursable as billed.
- 891-No additional payment after reconsideration.

Issues

1. Is the rendering provider eligible to perform needle electromyography?
2. Is the rendering provider eligible to perform nerve conduction tests?
3. Does the disputed nerve conduction studies require preauthorization?
4. Is the requestor entitled to reimbursement for the nerve conduction tests?
5. Is the requestor entitled to reimbursement for the office consultation?

Litigation Background for Needle EMG and MUA

Portions of the Texas Board of Chiropractic Examiners rules of practice were challenged by the Texas Medical Association and the Texas Medical Board in 2009. At issue was whether 22 Texas Administrative Code §75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) were within the scope of chiropractic practice in Texas. Specifically, the parties sought judgment on whether rules allowing Chiropractors to perform needle

electromyography (EMG) and manipulation under anesthesia (MUA) were valid. On November 24, 2009, the 345th District Court issued a judgment in which presiding judge Honorable Stephen Yelenosky concluded that needle EMG and MUA exceeded the statutory scope of chiropractic practice in Texas. The Texas Board of Chiropractic Examiners appealed the district court's judgment to the Texas Court of Appeals, Third District. The Texas Court of Appeals in *Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n.*, 375 S.W.3d 464 (Tex. App. – Austin, 2012, pet. den.) issued an opinion affirming the district court's judgment, and concluding that needle EMG and MUA services are not within the chiropractic scope-of-practice. The Chiropractic Board exhausted its appeals and on August 8, 2013, the mandate affirming the district court's judgment was issued. The mandate states "...we affirm the remainder of the district court's judgment that subparts 75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) of the Texas Board of Chiropractic Examiners' scope-of-practice rule are void." In accordance with the Texas Court of Appeals opinion, the final mandate, and the scope of chiropractic practice requirement in 28 Texas Administrative Code §134.203(a)(6), needle EMG and MUA services may not be reimbursed.

Findings

1. Disputed service code 95861 is described as needle electromyography (EMG), 2 extremities. The respondent states in the position summary that "Texas Mutual paid the EMG testing and one unit of the H-reflex." The requestor noted that partial payment of \$182.60 was made and \$132.10 remains in dispute.

According to the medical documentation, this service was performed by Lawrence Wayne Parks, D.C. (Doctor of Chiropractic). Needle EMG involves insertion of a needle into a patient's muscle for the purpose of measuring electrical signals from that muscle. 28 Tex. Admin. Code section 134.203(a)(6) states "Notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act." The division finds that disputed service code 95861 is not within the scope of chiropractic practice because it is an electro-diagnostic test that involves the insertion of a needle into the patient. No reimbursement can be recommended for the needle EMG pursuant to 28 Tex. Admin. Code section 134.203(a)(6).

2. Disputed services 95903, 95904, and 95934 fall in the category of nerve conduction tests under applicable AMA current procedural terminology (CPT). These tests involve placing a stimulating electrode directly over the nerve to be tested. These are surface tests that do not involve needles. According to the medical documentation found, these services were performed by Lawrence Wayne Parks, D.C. (Doctor of Chiropractic). As stated in the Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012

In the second provision, paragraph(c)(3)(A), TBCE imposed certification and supervision requirements on any licenses who administered "electro-neuro diagnostic testing" that varied according to whether the testing was "surface (non-needle)" or involved the use of needles. The import or effect of paragraphs (c)(2)(D) and (c)(3)(A), as the parties agree, was that chiropractors with specified training and certification could utilize needle EMG in evaluating or examining patients. In their live petitions and summary-judgment motions, the Physician Parties challenged the validity of the two rule provisions **specifically addressing needle EMG** [emphasis added]- 75.17(c)(2)(D) and (c)(3)(A) – plus the general standard regarding use of needles-75.17(a)(3)."

That is, surface tests were not in question during this suit. Pursuant to §75.17(c)(3)(A) effective December 24, 2009, 34 Texas Register 9208, services 95903, 95904, and 95934 are within the scope of chiropractic practice because they are surface tests.

3. According to the explanation of benefits, the respondent denied reimbursement for the disputed services based upon reason code "762."

28 Texas Administrative Code §134.600(p)(12) requires preauthorization for "treatments and services that exceed or are not addressed by the Commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the carrier."

The requestor billed CPT codes 95934, 95903 and 95904 for the diagnoses "722.10-Displacement of Lumbar Intervertebral Disk without Myelopathy, 724.4-Thoracic or Lumbosacral neuritis or radiculitis, unspecified, and V45.89-Presence of neuropacemaker or other electronic device."

The Low Back Chapter of the Official Disability Guidelines (ODG) states:

"Not recommended. There is minimal justification for performing nerve conduction studies when a patient is presumed to have symptoms on the basis of radiculopathy. ([Utah, 2006](#)) See also the [Carpal Tunnel Syndrome Chapter](#) for more details on NCS. Studies have not shown portable nerve conduction devices to be effective. [EMGs](#) (electromyography) are recommended as an option (needle, not surface) to obtain unequivocal evidence of radiculopathy, after 1-month conservative therapy, but EMG's are not necessary if radiculopathy is already clinically obvious."

Therefore, nerve conduction studies are not a recommended treatment for the lumbar radiculopathy. Per 28

Texas Administrative Code §134.600(p)(12), the disputed nerve conduction studies required preauthorization. The requestor did not submit proof that preauthorization was obtained. As a result, a preauthorization issue exists and reimbursement is not recommended.

4. The fee guideline applicable to evaluation and management services including the office consultation in dispute is 28 Texas Administrative Code §134.203, Titled *Medical Fee Guideline for Professional Services*. In the absence of a contracted rate, the reimbursement for a professional service, including an evaluation and management service, is established under paragraph (c). §134.203 (c) states "To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications. The term "Medicare payment policy" is defined for this rule by §134.203 (a)(5). The definition includes billing the correct codes as specified by Medicare.

The Medicare billing policy applicable to the disputed service can be found at www.cms.gov in the CMS Manual System Pub 100-04 Medicare Claims Processing, Transmittal 1875, Change Request (CR) 6740, dated December 14, 2009, effective January 1, 2010. CR#6740 states that the use of all consultation codes (ranges 99241-99245 and 99251-99255) was eliminated effective January 1, 2010. In lieu of consultation codes, participants were directed to use codes 99201-99205 that identify the complexity of the visit performed. The eliminated codes include 99244 which the requestor reported on its medical bills.

The division concludes that the requestor failed to code the office consultation in dispute in accordance with the applicable Medicare policy in effect on the date the service in dispute was provided, thereby failing to meet the correct coding requirements of §133.20(c), and §134.203 (b)(1). For that reason, no reimbursement can be recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has not established that reimbursement is due for the specified services. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

10/09/2013

Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.